Supreme Court, U.S.
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No. 91-1728

In the Supreme Court of the United States

OCTOBER TERM, 1992

JAMES E. WHITE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion by refusing to admit into evidence the entire Internal Revenue Code and a copy of 26 U.S.C. 6020.

2. Whether petitioner's conviction was barred by the alleged failure of the Internal Revenue Service to follow unspecified regulations.

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OPINIONS BELOW

The judgment order of the court of appeals affirming petitioner's conviction (Pet. App. 2) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 2) was entered on December 11, 1991. A petition for rehearing was denied on January 23, 1992. The petition for a writ of certiorari was filed on March 31, 1992. the jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Nebraska, petitioner was

convicted on four counts of willfully failing to file federal income tax returns for the years 1984 through 1987, in violation of 26 U.S.C. 7203. Petitioner was sentenced to serve nine months under house arrest and five years' probation.

Petitioner was employed as an electrician with the Kellogg Company in Omaha, Nebraska. Between 1984 and 1987, petitioner failed to file income tax returns or pay income taxes on the wages he earned at Kellogg. On the W-4 forms he filed with his employer for each of those years, petitioner claimed that he was "exempt" from federal taxation. Gov't C.A. Br. 9-10.

Following petitioner's conviction, the court of appeals affirmed by judgment order. Pet. App. 2.

ARGUMENT

1. Petitioner first contends (Pet. 5-6) that the district court erred in refusing to admit into evidence the Internal Revenue Code and 26 U.S.C. 6020, which he claims would have supported his defense that he lacked criminal intent.

Although the district court denied petitioner's request for admission of the entire Internal Revenue Code, the court offered to take judicial notice of and instruct the jury about any sections of the Code that petitioner thought were relevant to his defense. Tr. 283-284. The court did not abuse its discretion in following that course.

The courts of appeals have long held that a trial court has considerable discretion to exclude legal materials upon which a defendant claims to have relied, because those materials are often of only marginal relevance, and because the introduction of legal materials can confuse the jury. See *United States* v. *Bergman*, 813 F.2d 1027, 1029-1030 (9th Cir.), cert. denied, 484 U.S. 852 (1987); *United States* v.

Malquist, 791 F.2d 1399, 1402 (9th Cir.), cert. denied, 479 U.S. 954 (1986); see also *United States* v. *Mann*, 884 F.2d 532, 538 (10th Cir. 1989) (exclusion of cases and writings proper because they would confuse jury about the law and because defendant's testimony was more probative of his subjective beliefs than publications representing the source of those beliefs); *United States* v. *Flitcraft*, 803 F.2d 184, 185-186 (5th Cir. 1986), cert. denied, 490 U.S. 1080 (1989); *United States* v. *Mueller*, 778 F.2d 539, 540 (9th Cir. 1985); *United States* v. *Latham*, 754 F.2d 747, 751 (7th Cir. 1985); *United States* v. *Kraeger*, 711 F.2d 6, 7-8 (2d Cir. 1983); *United States* v. *Bernhardt*, 642 F.2d 251, 253 (8th Cir. 1981); *United States* v. *House*, 617 F. Supp. 232, 233 (W.D. Mich. 1985) (noting "enormous" potential for jury confusion), aff'd, 787 F.2d 593 (6th Cir. 1986) (Table). The court is particularly justified in excluding legal materials on which the defendant does not claim to have relied. The district court therefore did not err by refusing to admit the entire Internal Revenue Code, which could not possibly have been of assistance to the jury in this case.

The district court also did not abuse its discretion in refusing to admit the written text of 26 U.S.C. 6020. At trial, petitioner cross-examined Paul Taylor, an Internal Revenue Service agent, regarding Section 6020. Petitioner's counsel suggested that petitioner had relied on that statute in concluding that filing federal income tax returns is voluntary. Tr. 258-259, 276-277. In fact, at petitioner's request, Taylor read the entire text of Section 6020 to the jury. Tr. 258-259, 276.[1] Petitioner subsequently

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[1] Section 6020 provides:

(a) Preparation of return by Secretary

asked the court to admit a written copy of Section 6020. The court declined to do so, on the ground that Section 6020 was not relevant to petitioner's defense because it did not relieve him of the responsibility to file his federal income tax returns. Tr. 325-327.

Nothing in Section 6020 suggests that a taxpayer does not have an obligation to file a tax return. Moreover, petitioner decided not to take the stand at trial, and there was therefore no evidence before the jury that petitioner had relied on Section 6020 in concluding that he was not required to file returns during the years that were in issue at trial.[2] Thus,

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> If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.
>
> **(b) Execution of return by Secretary**
>
> **(1) Authority of Secretary to execute return**
>
> If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.
>
> **(2) Status of returns**
>
> Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

[2] Petitioner's only witness at trial testified that he believed that petitioner was confused about the requirements of the tax laws (Tr. 293), but he did not testify that petitioner's confusion

petitioner failed to lay a sufficient foundation for the admission of the text of Section 6020.[3] In any event, the text of Section 6020 was already in evidence as a result of Agent Taylor's testimony, and the court allowed petitioner to question both Taylor and Maurice Steier, an accountant and attorney called by petitioner as an expert witness, about the existence and import of Section 6020. Tr. 258-259, 276-277, 296-298. The court's ruling with regard to the written text of Section 6020 therefore did not in any way restrict petitioner's ability to present his defense to the jury.

2. Petitioner also claims (Pet. 7-10) that the IRS failed to follow its own regulations before instituting this criminal prosecution.

Petitioner does not identify any regulation that the IRS failed to follow in this case. He appears to contend that the IRS was required to answer certain questions he posed before he could be prosecuted. No statute, regulation, or judicial decision imposes such a requirement. And even if the IRS had violated an internal regulation or guideline to that effect, petitioner would not be entitled to immunity from

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was based on any particular provision of the Code, much less Section 6020.

[3] Nothing in the record supports petitioner's assertion (Pet. 6) that he "chose not to take the witness stand because he could not use the Code to support his point that he had no intent to violate the law." Petitioner did not make that claim at the time he informed the court that he would not testify. Tr. 286-287. Moreover, by virtue of the court's prior admission of testimony regarding Section 6020, petitioner had no reason to believe that the court would have prevented him from testifying about the basis for his claimed beliefs or referring to the legal materials he wished to admit.

prosecution. *United States* v. *Caceres*, 440 U.S. 741, 749-755 (1979).

Petitioner asserts that he "communicated with the IRS" but that "his communications were ignored or misplaced" (Pet. 7); that he was "never given a chance to comply with any specific demands of the IRS" (Pet. 8); that he "question[ed] the regulations and the code book and tr[ied] to get a reconcilliation [*sic*] from the IRS" (Pet. 9); and that the IRS never informed him of any tax liability by making an assessment of his taxes (Pet. 10). Those complaints were addressed in the magistrate's report on petitioner's pretrial motion to dismiss the indictment. Pet. App. 4-5. The magistrate viewed petitioner's claims as an argument that he lacked the intent to commit the offense of willful failure to file tax returns. The magistrate and the district court properly concluded that that issue was for the jury to resolve. *Id.* at 3, 5. The jury resolved that issue against petitioner, and petitioner has failed to show that the jury's conclusion on that issue was unreasonable.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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